

European Civil Procedure

Handout 4

Protective fora for consumer contracts (Articles 15–17 LC/Articles 17–19 Brussels I *bis* Regulation)

- Typical characteristics of protective fora in European civil procedure
 - protection of structurally weaker party (policyholder/insured/beneficiary, consumer, employee) against structurally stronger party (insurer, trader, employer)
 - weaker parties can sue at their own domicile
 - protection of weaker parties from lawsuits outside the State where they are domiciled
 - restrictions for jurisdiction agreements
 - only the weaker party personally is protected
 - protective forum cannot be used by an assignee (*Shearson Lehman Hutton*; even if the assignee also falls into the protected category, see ECJ *Schrems/Facebook*)
 - protective forum cannot be used for representative lawsuits brought by associations (*Veroin für Konsumenteninformation/Henkel*)
 - rules on protective fora are “closed systems” – i.e., other fora provided for in the Lugano Convention/Brussels I *bis* Regulation are, in principle, only available if explicitly stated (ECJ *Glaxosmithkline*)
 - but: submission to jurisdiction by entering an appearance is possible where a lawsuit is brought in violation of the rules on protective fora
- material scope of application of consumer fora
 - matter relating to a contract
 - narrower criteria than for Article 5.1 LC/Article 7.1 Brussels I *bis* Regulation (see ECJ *Engler, Gabriel, Ilsinger*)
 - tort claims that are “indissociably linked to a contract actually concluded” also covered (ECJ *AU/Reliantco Investments*)
 - B2C situation – contract concluded between
 - consumer (natural person acting outside their trade or profession) *and*
 - trader (person who pursues commercial or professional activities)

- contract covered by Article 15(1)(a–c) LC/Article 17(1)(a–c) Brussels I *bis* Regulation
 - sale of goods on instalment credit terms
 - credit to finance the sale of goods
 - trader pursues commercial or professional activities in the state of the consumer’s domicile or directs them to that state
- no limitation to “everyday contracts”/small claims
- transport contracts (with the exception of package travel) excluded (Article 15(3) LC/Article 17(3) Brussels I *bis* Regulation)
- Extended territorial/personal scope of application
 - Article 15(2) LC/Article 17(2) Brussels I *bis* Regulation: trader domiciled in a third state is deemed to be domiciled in a state bound by the LC where they have a branch, agency, or other establishment in disputes arising out of the operations of that branch, agency or establishment
 - **Example:** T Ltd. is domiciled in the UK and has a branch in Zurich, Switzerland. Through the Zurich branch, T Ltd. enters into a consumer contract covered by Article 15(1) LC with C (domiciled in Reykjavík, Iceland). C can sue T Ltd. in Reykjavík under Article 16(1) LC. Alternatively, C can sue T Ltd. in Switzerland [local jurisdiction subject to Swiss national law] under Article 16(1) LC.
 - Article 6(1) Brussels I *bis* Regulation: protective fora for consumers and employees (but not those for insurance matters) also apply to third-state traders and employers
 - **Example:** T Ltd. is domiciled in the UK and has no branch, agency, or other establishment within the EU or in a Lugano Convention State. It enters into a consumer contract covered by Article 17(1) Brussels I *bis* Regulation with C (domiciled in Cologne, Germany). C can sue T Ltd. in Cologne under Article 18(1) LC. Each Member State’s national law determines whether C can also sue T Ltd. elsewhere (see Article 17(1) in conjunction with Article 6 Brussels I *bis* Regulation). If T Ltd. had a branch, agency, or other establishment in a Member State (or LC Contracting State) and the dispute arose out of the operations of that establishment, the exorbitant fora provided for in national law would not apply to it (because of Article 17(2) Brussels I *bis* Regulation/Article 15(2) LC).

Case 1

N (domiciled in the Netherlands) and her family spent their skiing holidays in V, a village in the Swiss canton of Valais. As their trip took place during the low season, they decided not to book in advance. When the family arrived in V, all hotels in the village but one owned by H (domiciled in V) were fully booked, so the family booked rooms there. H has a bilingual website (French and English); it indicates an e-mail address and a telephone number (including the +41 code). It also contains a map with directions to the hotel from Geneva and Zurich airports. At the time of booking, N and her family were unaware of the existence of the website. N's family was dissatisfied with the accommodation. The heating did not work properly, the house was noisy, and the breakfast was bad. Therefore, N refuses to pay the full rate for the room.

Where can H sue for payment?

Case 2

C (domiciled on the island of Cres, Croatia) wants to renovate her house. C takes out a loan in the amount of CHF 80'000 from B, a Swiss bank domiciled in Basel. The credit agreement, which contains a jurisdiction clause in favour of the courts of Basel, is arranged by X, an independent credit broker domiciled in Croatia to whom C pays a commission. X regularly brokers similar credit agreements between B and Croatian lenders. In the course of the renovation, C transforms the attic of her house into an apartment to be let to tourists during the summer season. She plans to use the income for the repayment of the loan. After the renovation is finished, a lawyer friend tells C that her credit agreement is probably invalid because it violates certain provisions of Croatian law. C now wants to sue B for declaration that the agreement is null and void.

Do the courts for Cres have jurisdiction for C's claim?